

## SUBPART 227-3

### PRE-2003 NITROGEN OXIDES EMISSIONS BUDGET AND ALLOWANCE PROGRAM

Sec.	
227-3.1	Purpose
227-3.2	Program applicability
227-3.3	Definitions
227-3.4	State NO <sub>x</sub> Budget
227-3.5	Allowance allocation
227-3.6	General provisions
227-3.7	Permits
227-3.8	Allowance transfer and use
227-3.9	Allowance banking
227-3.10	Early reduction allowances
227-3.11	NATS—NO <sub>x</sub> Allowance Tracking System
227-3.12	AARs—Authorized Account Representatives
227-3.13	Emissions monitoring
227-3.14	Recordkeeping
227-3.15	Reporting
227-3.16	Annual reconciliation of allowances and NO <sub>x</sub> emissions
227-3.17	Compliance certification
227-3.18	Enforcement
227-3.19	Program evaluation

#### Historical Note

Subpart (227-3.1—227-3.19) filed Feb. 3, 1999 eff. 30 days after filing.

#### § 227-3.1 Purpose.

The purpose of this Subpart is to establish a NO<sub>x</sub> emissions budget and allowance program which will act as a mechanism to reduce NO<sub>x</sub> emissions from budget sources during each control period in an economically efficient manner. Establishment of this program will fulfill New York State's commitment, as outlined in the OTC NO<sub>x</sub> MOU, to propose legal or regulatory measures aimed at implementing the "Phase 2" NO<sub>x</sub> emissions reductions.

#### Historical Note

Sec. filed Feb. 3, 1999 eff. 30 days after filing.

#### § 227-3.2 Program applicability.

(a) *Mandatory applicability.* This Subpart applies to the owner and/or operator of every budget source.

(b) *Source opt in provisions.* The owner and/or operator of any major stationary source in the State that does not meet the definition of a budget source, may opt in to this program subject to the following conditions:

(1) To opt in to this program, the owner and/or operator of the candidate opt in source shall submit to the department an opt in application which includes documentation of both the opt in baseline control period NO<sub>x</sub> emissions and NO<sub>x</sub> emissions during the preceding five years from all other sources to which production could be moved from the candidate opt in source. To become a candidate opt in source for the 1999 control period, the owner and/or operator of the source must submit the opt in application within 30 days of the effective date of this Subpart. To become a candidate opt in source for any later control period, the owner and/or operator must submit the opt in application by January 1st preceding that control period.

(2) Upon approval of the opt in application, the candidate opt in source becomes an opt in source. Every opt in source will be treated as a budget source except with regard to the

continued receipt of allowances following cessation of operations as provided for in section 227-3.5(c) of this Subpart, the transfer of allowances from the Department New Budget Source Holding Account pursuant to section 227-3.5(e) of this Subpart, and the creation of early reduction allowances pursuant to section 227-3.10 of this Subpart.

(3) The allowance allocation for an opt in source shall be equivalent to the opt in baseline control period NO<sub>x</sub> emissions or the current permitted NO<sub>x</sub> emissions from the source, whichever is less. However, if an opt in source creates emission reduction credits in accordance with the provisions of Part 231 of this Title by reducing its NO<sub>x</sub> emission rate, the allowance allocation to the opt in source will not be reduced. This does not in any way obviate the need for the source to comply with any enforceable permit limitations relevant to any emission reduction credits created under the terms of Part 231 of this Title and the restriction set forth in section 227-3.5(b) of this Subpart on the transfer of emission reduction credits to a source that does not maintain a compliance account in the NATS.

(4) When an opt in source ceases or curtails operations, the number of allowances allocated to it will be decreased by the number of tons of NO<sub>x</sub> emissions reduced through the cessation or curtailment of operations.

(5) Once the department approves a source's opt in application, the department will, by the following May 1st, allocate allowances to the new opt in source and modify the State NO<sub>x</sub> Budget accordingly. In no case will the allocation of allowances to an opt in source require adjustments to the allocation of allowances to the budget sources listed in section 227-3.5(a) of this Subpart.

(6) Any person who opts in to this program, can not opt out unless NO<sub>x</sub> emitting operations at the opt in source have ceased and relevant permits are surrendered.

(c) No source may be a budget source or opt in source unless it is a major stationary source and has a title V facility permit. No source that accepts an emissions cap pursuant to Subpart 201-7 of this Title may be a budget source or an opt in source.

#### Historical Note

Sec. filed Feb. 3, 1999 eff. 30 days after filing.

### § 227-3.3 Definitions.

(a) For the purposes of this Subpart, the general definitions of Part 200 of this Title apply.

(b) For the purposes of this Subpart, the following definitions also apply:

(1) *AAR—Authorized Account Representative.* The person who is authorized, in writing, to transfer and otherwise manage allowances as well as certify reports to the NATS and the NETS.

(2) *Account.* The place in the NATS where an allowance is recorded.

(3) *Account number.* The identification number given by the administrator to an account in which allowances are held in the NATS.

(4) *Allocate or allocation.* The assignment of an allowance by the department to an account as recorded by the administrator.

(5) *Allocation period.* The time period encompassing the calendar years 1999 through 2002 and corresponding with the "Phase 2" period controls outlined in the OTC NO<sub>x</sub> MOU.

(6) *Allowance.* The limited authorization to emit one ton of NO<sub>x</sub> during a specified control period, or any control period thereafter. An allowance shall not constitute a security or other form of property.

(7) *Allowance deduction.* The permanent retirement by the administrator of an allowance used for compliance purposes from a compliance account or compliance overdraft account.

(8) *Allowance transfer.* The transfer of an allowance from one account to another account by whatever means, including, but not limited to, purchase, trade, auction, or gift.

(9) *Allowance transfer deadline.* 11:59 p.m. of December 31st of a given calendar year. It is the deadline by which an allowance must be submitted for recording in a budget source's

compliance account or compliance overdraft account for purposes of complying with the requirements of this Subpart applicable to the preceding control period.

(10) *Banked allowance.* An allowance which is not deducted with regard to its' initially applicable control period but which is carried forward for future use.

(11) *Banking.* The retention of unused allowances from one control period for use in a future control period.

(12) *Boiler.* A device that combusts fossil fuel and produces steam or heats water or any other heat transfer medium.

(13) *Budget source.* Subject to the provisions of subdivision (c) of this section, any fossil fuel fired boiler or indirect heat exchanger with a maximum heat input capacity equal to or greater than 250 million British thermal units per hour (MMBtu/hr) and any electric generating device with a rated output equal to or greater than 15 megawatts.

(14) *CEMS—Continuous Emissions Monitoring System.* The equipment required by this Subpart to sample, analyze, and measure NO<sub>x</sub> emissions so as to provide a permanent record of emissions expressed in lbs/MMBtu and tons per day. The following devices and systems are components of a continuous emissions monitoring system:

- (i) nitrogen oxides pollutant concentration monitor(s);
- (ii) diluent gas monitor(s) (oxygen or carbon dioxide);
- (iii) a data acquisition and handling system; and
- (iv) flow monitoring systems (where appropriate).

(15) *Compliance account.* An account assigned to a budget source from which an allowance may be deducted for compliance purposes.

(16) *Compliance overdraft account.* An account assigned to a facility which has two or more budget sources from which an allowance may be deducted for compliance purposes.

(17) *Control period.* The period beginning May 1st of a calendar year and ending on September 30th of the same year.

(18) *Current year.* The calendar year in which the action takes place. For example, an allowance allocated for use in 1999 which goes unused and becomes a banked allowance on January 1, 2000 can be used in the "current year" 2000 subject to the conditions for banked allowance use as set forth in section 227-3.9 of this Subpart.

(19) *Department Energy Efficiency Holding Account.* An account held by the department from which allowances may be transferred to NYSERDA as part of an effort to investigate and analyze the potential for awarding allowances to persons who implement electric energy end-use efficiency measures.

(20) *Department New Budget Source Holding Account.* An account held by the department from which allowances may be transferred to new budget sources.

(21) *Department Retirement Account.* An account held by the department for purposes of holding allowances which were never used for compliance purposes, and may no longer be used by anyone at any time.

(22) *Early reduction allowance.* An allowance awarded to a budget source in 1999 by the department following department certification of each ton of NO<sub>x</sub> emissions reduced by the budget source during the 1997 and/or 1998 control periods.

(23) *Electric generating device.* Any fossil fuel fired combustion device which provides electricity for sale or use.

(24) *Excess emissions.* The number of tons of NO<sub>x</sub> emissions from a budget source during a control period, rounded to the nearest whole ton, which is greater than the number of allowances in the budget source's compliance account and/or compliance overdraft account at the allowance transfer deadline.

(25) *Fossil fuel fired.* The combustion of fossil fuel or any derivative of fossil fuel alone, or, if in combination with any other fuel, fossil fuel comprises 51 percent or greater of the annual heat input on a Btu basis.

(26) *General account.* An account that is not a compliance account, a compliance overdraft account, the Department Energy Efficiency Holding Account, the Department New Budget Source Holding Account, or the Department Retirement Account.

(27) *Guidance Document.* The January 28, 1997 document issued by the Ozone Transport Commission titled "Guidance for Implementation of Emission Monitoring Requirements for the NO<sub>x</sub> Budget Program" as well as attendant and incorporated documents including the July 3, 1997 document issued by the OTC titled "NO<sub>x</sub> Budget Program Monitoring Certification and Reporting Requirements" and the July 3, 1997 document issued by the administrator titled "Electronic Data Reporting, Acid Rain Program/NO<sub>x</sub> Budget Program."

(28) *Heat input.* Heat derived from the combustion of fuel in a budget source. Heat input does not include the heat derived from preheated combustion air, re-circulated flue gas, or exhaust from other sources.

(29) *Indirect heat exchanger.* Combustion equipment in which the flame and/or products of combustion are separated from any contact with the principal material in the process by metallic or refractory walls. It includes, but is not limited to, steam boilers, vaporizers, melting pots, heat exchangers, column reboilers, fractioning column feed pre-heaters, reactor feed preheaters, fuel fired reactors such as steam hydrocarbon reformer heaters and pyrolysis heaters.

(30) *Initially applicable control period.* The first control period for which a particular allowance may be deducted for compliance purposes.

(31) *NATS—NO<sub>x</sub> Allowance Tracking System.* The computerized system used by the administrator to track the status of every allowance in every account.

(32) *New budget source.* A budget source that begins operating during the allocation period.

(33) *NETS—NO<sub>x</sub> Emissions Tracking System.* The computerized system used by the administrator to track NO<sub>x</sub> emissions by budget sources.

(34) *NYSERDA.* The New York State Energy Research and Development Authority.

(35) *Opt in.* To voluntarily make oneself subject to the terms of this Subpart when one is an owner and/or operator of a major stationary source that does not meet the definition of a budget source.

(36) *Opt in baseline control period NO<sub>x</sub> emissions.* A representative average of the actual NO<sub>x</sub> emissions for two consecutive control periods within the five years preceding the opt in application.

(37) *OTC.* The Ozone Transport Commission established pursuant to section 184(a) of the Act, 42 U.S.C. section 7511c(a), and section 176A of the Act, 42 U.S.C. section 7506a. In addition to the District of Columbia, the OTC consists of the following member states and commonwealths: Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont and Virginia.

(38) *OTC NO<sub>x</sub> MOU.* The September 27, 1994 Memorandum of Understanding signed by representatives of all the members of the OTC, with the exception of the Commonwealth of Virginia. The OTC NO<sub>x</sub> MOU commits the signatories to accomplish, in two successive phases, certain NO<sub>x</sub> emissions reductions within their jurisdictions which go beyond those achieved by the implementation of reasonably available control technology. The "Phase 2" requirements are to be implemented during the 1999 through 2002 control periods; the "Phase 3" requirements are to be implemented from the 2003 control period forward.

(39) *OTR.* The Ozone Transport Region as designated by section 184(a) of the Act, 42 U.S.C. section 7511c(a).

(40) *OTR NO<sub>2</sub> Budget.* The maximum number of allowances which are available to all the signatories to the OTC NO<sub>2</sub> MOU collectively for allocation to all accounts in the current year.

(41) *Quantifiable.* A reliable and replicable basis for calculating the amount of emissions reductions that is acceptable to the department and the administrator.

(42) *Real.* A reduction in emissions, quantified retrospectively, net of any consequential increase in actual emissions due to shifting production.

(43) *Recorded (with regard to an allowance transfer or deduction).* An account has been updated by the administrator with the details of an allowance transfer or deduction.

(44) *Repowering (for the purpose of early reduction allowances).*

(i) Qualifying repowering technology as defined by 40 CFR part 72; or

(ii) the replacement of a budget source by either a new combustion source or the purchase of heat or power from the owner and/or operator of a new combustion source, provided that the replacement source:

(a) (regardless of owner and/or operator) is on the same or contiguous property as the budget source being replaced;

(b) has a maximum heat output rate or power output rate that is equal to or greater than the corresponding maximum heat output rate or power output rate of the budget source being replaced; and

(c) incorporates technology capable of controlling multiple combustion pollutants simultaneously with improved fuel efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

(45) *State NO<sub>2</sub> Budget.* The maximum number of allowances which are available to the department for allocation to all accounts in the current year.

(46) *Submitted.* Sent to the appropriate authority under the signature of the AAR. For purposes of determining when something is submitted, an official U.S. Postal Service postmark or electronic time stamp shall establish the date of submittal.

(47) *Surplus.* An emission reduction which is not accounted for in the New York State State Implementation Plan at the time the reduction is made or required by a State or Federal permit or order. Emission reductions used as the basis for the generation of emission reduction credits pursuant to Subpart 231-2 of this Title are not surplus.

#### Historical Note

Sec. filed Feb. 3, 1999 eff. 30 days after filing.

### § 227-3.4 State NO<sub>2</sub> Budget.

(a) Except as may be modified in accordance with subdivision (b) of this section, the State NO<sub>2</sub> Budget for the allocation period is initially set at 46,959 tons for each control period.

(b) The initial State NO<sub>2</sub> Budget may be modified by the department to account for allowances allocated to opt in sources pursuant to section 227-3.2(b) of this Subpart and early reduction allowances allocated to budget sources during 1999 pursuant to section 227-3.10 of this Subpart. The department will record any modification of the State NO<sub>2</sub> Budget and submit it to the administrator by March 31, 1999 for the 1999 control period, and by January 30th preceding each later control period. The department must place in the Environmental Notice Bulletin a notice seeking comment on the modification. The comment period shall be for at least 30 days following the publication of the notice in the Environmental Notice Bulletin.

#### Historical Note

Sec. filed Feb. 3, 1999 eff. 30 days after filing.

## § 227-3.5 Allowance allocation.

(a) By May 1, 1999, the budget source compliance accounts and department accounts listed below will be allocated the indicated number of allowances for each control period during the allocation period. Each allowance may only be deducted following the start of its initially applicable control period.

<i>Facility</i>	<i>Account</i>	<i>Allowances</i>
Colonie Cogen	010747000001	60
Brooklyn Navy Yard	054914000001	35
Brooklyn Navy Yard	054914000002	35
Saranac Cogeneration	054574000001	89
Saranac Cogeneration	054574000002	88
Cogen Energy Technology (Fort Orange Paper)	010190000001	115
Encogen Four	010331000001	128
Fibetek Energy LLC	05065100BLR1	740
Fibetek Energy LLC	05065100BLR2	0
Fibetek Energy LLC	05065100BLR3	0
Fibetek Energy LLC	05065100BLR4	0
Fibetek Energy LLC	05065100BLR5	0
Fulton Cogen Assoc Cogen Plant	00256601GTDB	145
Onondaga Cogen	050855000001	36
Onondaga Cogen	050855000002	14
Syracuse University Cogen	054425000001	113
Syracuse University Cogen	054425000002	114
Indeck-Corinth Energy Center	050458000001	64
Indeck-Illion Energy Center	050459000001	78
Indeck-Olean Energy Center	054076000001	41
Indeck-Oswego Energy Center	050450000001	131
Indeck-Silver Springs Energy Ctr.	050449000001	111
Indeck-Yerkes Energy Center	050451000001	128
Fort Drum HTW Cogeneration Facility	01046400E001	63
Fort Drum HTW Cogeneration Facility	01046400E002	64
Fort Drum HTW Cogeneration Facility	01046400E003	64
Beaver Falls	010617000001	39
Carthage	010620000001	144
Natural Dam	010614000001	147
Syracuse	010621000001	43
South Glens Falls	010618000001	144
KIAC Partners	054114000GT1	30
KIAC Partners	054114000GT2	29
LG&E Westmoreland	0540341GTDBS	46
Lockport	054041011854	144
Lockport	054041011855	144
Lockport	054041011856	144
Canton Cogen	010662000001	103
Nissequogue Cogen	054149000001	111
Oxbow Power Cogeneration Facility	0541310NTCT1	79
Ogdensburg Energy Facility	010803000001	35
Ogdensburg Energy Facility	010803000002	14
Massena Energy Facility	054592000001	52
Independence Station	054547000001	53
Independence Station	054547000002	53
Independence Station	054547000003	53
Independence Station	054547000004	53

Facility	Account	Allowances
Batavia Energy Facility	054593000001	103
Sterling Energy Facility	050744000001	108
TBG Cogen	050292000GT1	77
TBG Cogen	050292000GT2	76
Trigen-Nassau Energy Corp.	052056000004	172
UDG Goodyear	050202000001	190
E. Syracuse Generating Co., L.P.	05097800000A	25
E. Syracuse Generating Co., L.P.	05097800000B	25
Selkirk Cogen Partners, L.P.	010725CTG101	101
Selkirk Cogen Partners, L.P.	010725CTG201	99
Selkirk Cogen Partners, L.P.	010725CTG301	99
Danskammer Point	002480000001	25
Danskammer Point	002480000002	25
Danskammer Point	002480000003	504
Danskammer Point	002480000004	912
Roseton Generating St.	008006000001	1067
Roseton Generating St.	008006000002	1067
59th Street Steam Station	002503BLR114	47
59th Street Steam Station	002503BLR115	47
59th Street Steam Station	002503CT0001	0
74th St Generating Station	002504000120	102
74th St Generating Station	002504000121	102
74th St Generating Station	002504000122	102
74th St Generating Station	002504CT0001	1
74th St Generating Station	002504CT0002	0
Arthur Kill Generating	002490000020	486
Arthur Kill Generating	002490000030	289
Arthur Kill Generating Station	0002490CT0001	6
Astoria Generating Station	008906000030	645
Astoria Generating Station	008906000040	537
Astoria Generating Station	008906000050	581
Astoria Generating Station	008906CT0001	5
Astoria Combustion Turbines	008906CT02-1	42
Astoria Combustion Turbines	008906CT02-2	42
Astoria Combustion Turbines	008906CT02-3	42
Astoria Combustion Turbines	008906CT02-4	42
Astoria Combustion Turbines	008906CT03-1	42
Astoria Combustion Turbines	008906CT03-2	41
Astoria Combustion Turbines	008906CT03-3	42
Astoria Combustion Turbines	008906CT03-4	42
Astoria Combustion Turbines	008906CT04-1	42
Astoria Combustion Turbines	008906CT04-2	41
Astoria Combustion Turbines	008906CT04-3	42
Astoria Combustion Turbines	008906CT04-4	42
Astoria Combustion Turbines	008906CT0005	4
Astoria Combustion Turbines	008906CT0007	3
Astoria Combustion Turbines	008906CT0008	4
Astoria Combustion Turbines	008906CT0009	4
Astoria Combustion Turbines	008906CT0010	5
Astoria Combustion Turbines	008906CT0011	4
Astoria Combustion Turbines	008906CT0012	5
Astoria Combustion Turbines	008906CT0013	4
East River Generating	002493000060	518

<i>Facility</i>	<i>Account</i>	<i>Allowances</i>
East River Generating	002493000070	265
Gowanus Combustion Turbines	002494CT01-1	15
Gowanus Combustion Turbines	002494CT01-2	15
Gowanus Combustion Turbines	002494CT01-3	15
Gowanus Combustion Turbines	002494CT01-4	15
Gowanus Combustion Turbines	002494CT01-5	15
Gowanus Combustion Turbines	002494CT01-6	15
Gowanus Combustion Turbines	002494CT01-7	15
Gowanus Combustion Turbines	002494CT01-8	15
Gowanus Combustion Turbines	002494CT02-1	15
Gowanus Combustion Turbines	002494CT02-2	15
Gowanus Combustion Turbines	002494CT02-3	15
Gowanus Combustion Turbines	002494CT02-4	15
Gowanus Combustion Turbines	002494CT02-5	15
Gowanus Combustion Turbines	002494CT02-6	15
Gowanus Combustion Turbines	002494CT02-7	15
Gowanus Combustion Turbines	002494CT02-8	15
Gowanus Combustion Turbines	002494CT03-1	15
Gowanus Combustion Turbines	002494CT03-2	15
Gowanus Combustion Turbines	002494CT03-3	15
Gowanus Combustion Turbines	002494CT03-4	15
Gowanus Combustion Turbines	002494CT03-5	15
Gowanus Combustion Turbines	002494CT03-6	15
Gowanus Combustion Turbines	002494CT03-7	15
Gowanus Combustion Turbines	002494CT03-8	15
Gowanus Combustion Turbines	002494CT04-1	15
Gowanus Combustion Turbines	002494CT04-2	15
Gowanus Combustion Turbines	002494CT04-3	15
Gowanus Combustion Turbines	002494CT04-4	15
Gowanus Combustion Turbines	002494CT04-5	15
Gowanus Combustion Turbines	002494CT04-6	15
Gowanus Combustion Turbines	002494CT04-7	15
Gowanus Combustion Turbines	002494CT04-8	15
Hudson Avenue Steam Station	002496BLR071	82
Hudson Avenue Steam Station	002496BLR072	82
Hudson Avenue Steam Station	002496BLR081	82
Hudson Avenue Steam Station	002496BLR082	82
Hudson Avenue Combustion Turbines	002496CT0003	6
Hudson Avenue Combustion Turbines	002496CT0004	6
Hudson Avenue Combustion Turbines	002496CT0005	6
Indian Point Combustion Turbines	002497CT0001	10
Buchanan Substation Combustion Turbines	004233CT0001	10
Buchanan Substation Combustion Turbines	004233CT0002	4
Ravenswood Generating	002500000010	219
Ravenswood Generating	002500000020	248
Ravenswood Generating	002500000030	1507
Ravenswood Generating Station	002500CT0001	1
Ravenswood Combustion Turbines	002500CT02-1	18
Ravenswood Combustion Turbines	002500CT02-2	19
Ravenswood Combustion Turbines	002500CT02-3	18
Ravenswood Combustion Turbines	002500CT02-4	19
Ravenswood Combustion Turbines	002500CT03-1	18
Ravenswood Combustion Turbines	002500CT03-2	19



<i>Facility</i>	<i>Account</i>	<i>Allowances</i>
Ravenswood Combustion Turbines	002500CT03-3	18
Ravenswood Combustion Turbines	002500CT03-4	19
Ravenswood Combustion Turbines	002500CT0004	1
Ravenswood Combustion Turbines	002500CT0005	1
Ravenswood Combustion Turbines	002500CT0006	2
Ravenswood Combustion Turbines	002500CT0007	1
Ravenswood Combustion Turbines	002500CT0008	10
Ravenswood Combustion Turbines	002500CT0009	9
Ravenswood Combustion Turbines	002500CT0010	10
Ravenswood Combustion Turbines	002500CT0011	9
Ravenswood Steam Station	002500BLR001	38
Ravenswood Steam Station	002500BLR002	37
Ravenswood Steam Station	002500BLR003	37
Ravenswood Steam Station	002500BLR004	37
Waterside Generating	002502000061	111
Waterside Generating	002502000062	111
Waterside Generating	002502000080	122
Waterside Generating	002502000090	119
Narrows Combustion Turbines	002499CT01-1	26
Narrows Combustion Turbines	002499CT01-2	27
Narrows Combustion Turbines	002499CT01-3	26
Narrows Combustion Turbines	002499CT01-4	26
Narrows Combustion Turbines	002499CT01-5	26
Narrows Combustion Turbines	002499CT01-6	26
Narrows Combustion Turbines	002499CT01-7	27
Narrows Combustion Turbines	002499CT01-8	26
Narrows Combustion Turbines	002499CT02-1	26
Narrows Combustion Turbines	002499CT02-2	27
Narrows Combustion Turbines	002499CT02-3	27
Narrows Combustion Turbines	002499CT02-4	26
Narrows Combustion Turbines	002499CT02-5	26
Narrows Combustion Turbines	002499CT02-6	27
Narrows Combustion Turbines	002499CT02-7	27
Narrows Combustion Turbines	002499CT02-8	26
E F Barren	002511000010	450
E F Barren	002511000020	350
E F Barren	002511U00004	15
E F Barren	002511U00005	15
E F Barren	002511U00006	15
E F Barren	002511U00007	15
E F Barren	002511U00008	15
E F Barren	002511U00009	15
E F Barren	002511U00010	15
E F Barren	002511U00011	15
E F Barren	002511U00012	25
E F Barren	002511U00013	25
E F Barren	002511U00014	25
E F Barren	002511U00015	25
E F Barren	002511U00016	25
E F Barren	002511U00017	25
E F Barren	002511U00018	25
E F Barren	002511U00019	25
East Hampton I	002512UGT001	50

<i>Facility</i>	<i>Account</i>	<i>Allowances</i>
Far Rockaway Station	002513000040	143
Glenwood Station	002514000040	135
Glenwood Station	002514000050	135
Glenwood Station	002514U00020	15
Glenwood Station	002514U00021	15
Holtsville	008007U00001	18
Holtsville	008007U00002	18
Holtsville	008007U00003	18
Holtsville	008007U00004	18
Holtsville	008007U00005	18
Holtsville	008007U00006	18
Holtsville	008007U00007	18
Holtsville	008007U00008	18
Holtsville	008007U00009	18
Holtsville	008007U00010	18
Holtsville	008007U00011	19
Holtsville	008007U00012	19
Holtsville	008007U00013	19
Holtsville	008007U00014	19
Holtsville	008007U00015	19
Holtsville	008007U00016	19
Holtsville	008007U00017	19
Holtsville	008007U00018	19
Holtsville	008007U00019	19
Holtsville	008007U00020	19
Northport Power Station	002516UGT001	5
Northport Power Station	002516000001	625
Northport Power Station	002516000002	625
Northport Power Station	002516000003	600
Northport Power Station	002516000004	625
Port Jefferson	002517000001	0
Port Jefferson	002517000002	0
Port Jefferson	002517000003	375
Port Jefferson	002517000004	375
Port Jefferson	002517UGT0001	5
Wading River	007146UGT013	10
Wading River	007146UGT014	4
Wading River	007146UGT007	33
Wading River	007146UGT008	33
Wading River	007146UGT009	34
Albany Station	002539000001	70
Albany Station	002539000002	70
Albany Station	002539000003	70
Albany Station	002539000004	70
Dunkirk Station	002554000001	510
Dunkirk Station	002554000002	482
Dunkirk Station	002554000003	825
Dunkirk Station	002554000004	824
CR Huntley	002549000067	942
CR Huntley	002549000068	942
CR Huntley	002549000063	543
CR Huntley	002549000064	543
CR Huntley	002549000065	543

Facility	Account	Allowances
CR Huntley	002549000066	542
Oswego Generating Station	002594000003	0
Oswego Generating Station	002594000004	0
Oswego Generating Station	002594000005	780
Oswego Generating Station	002594000006	174
Goudey Station	002526000011	0
Goudey Station	002526000012	0
Goudey Station	002526000013	396
Greenidge Station	002527000004	0
Greenidge Station	002527000005	0
Greenidge Station	002527000006	376
Hickling Station	002529000001	0
Hickling Station	002529000002	0
Hickling Station	002529000003	0
Hickling Station	002529000004	0
Jennison Station	002531000001	0
Jennison Station	002531000002	0
Jennison Station	002531000003	0
Jennison Station	002531000004	0
Kinugh (Somerset)	006082000001	3949
Milliken Station	002535000001	776
Milliken Station	002535000002	795
Bowline Point	002625000001	713
Bowline Point	002625000002	172
Hillburn	002628000GT1	6
Lovel Generating Station	002629000003	62
Lovel Generating Station	002629000004	1261
Lovel Generating Station	002629000005	1262
Shoemaker	002632000GT1	15
Richard M Flynn (Holtsville)	007314000001	70
Charles Poletti Power	002491000001	1138
Rochester 3 (Beebe Station)	002640000012	211
Rochester 7 (Russell Station)	002642000001	105
Rochester 7 (Russell Station)	002642000002	172
Rochester 7 (Russell Station)	002642000003	178
Rochester 7 (Russell Station)	002642000004	220
Hudson River Mill	0540880N01PB	120
Ticonderoga Mill	054099000044	226
S A Carlson	002682000009	10
S A Carlson	002682000010	10
S A Carlson	002682000011	0
S A Carlson	002682000012	220
Kodak Park Div	010025000013	258
Kodak Park Div	010025000014	258
Kodak Park Div	010025000015	632
Kodak Park Div	010025000016	76
Kodak Park Div	010025000041	551
Kodak Park Div	010025000042	551
Kodak Park Div	010025000043	705
Kodak Park Div	010025000044	516
American Ref-fuel Niagara	0504720R1B01	158
General Electric - Waterford	880024000018	55

<i>Facility</i>	<i>Account</i>	<i>Allowances</i>
Department New Budget Source Holding Account		250
Department Energy Efficiency Holding Account		115

(b) For any budget source that, on or after November 15, 1992, reduces emissions, consequently creates emission reduction credits pursuant to Part 231 of this Title, and transfers said emission reduction credits as offsets to a source that does not maintain a compliance account in the NATS, the number of allowances allocated to it will be decreased commensurate with the emission reduction credits transferred to the other source. This requirement does not apply if the new or modified source that is receiving emission reduction credits from a budget source contemporaneously files an opt in application with the filing of its application for a permit or permit modification.

(c) Budget sources that cease to operate after the date of allocation will continue to receive allowances for each succeeding control period in the allocation period, unless a request to reallocate allowances has been filed pursuant to section 227-3.8(h) of this Subpart.

(d) Nothing in this Subpart shall be construed to limit the authority of the department to condition, limit, suspend or terminate any allowances or authorization to emit which said allowance represents.

(e) The allowances allocated to the Department New Budget Source Holding Account are subject to the following conditions:

(1) No opt in source can receive allowances from this account.

(2) The owner and/or operator of a new budget source may make a written request to the department to reserve a number of allowances in the account for the new budget source. The reservation request must be submitted by March 1st preceding the first control period of operation for the new budget source. The reservation request must include information detailing the permissible emission rate and maximum heat input capacity of the new budget source.

(3) Subject to the allocation set forth in subdivision (a) of this section, following department approval of the request for reservation of allowances, the department will reserve allowances in the account for each control period remaining in the allocation period in an amount no greater than the number resulting from multiplying the permissible emission rate by the maximum heat input capacity of the new budget source. If more than one new budget source requests the reservation of allowances and the number of requested allowances exceeds the allocation to the account, the department will reserve allowances from the account for the sources in the order in which the sources submitted approvable reservation requests. Should approvable reservation requests be submitted on the same day by different sources, the department will reserve allowances for those sources on a basis proportional to the number of allowances requested by each source.

(4) By October 30th of each year, the department will transfer reserved allowances to the compliance account of the new budget source in an amount no greater than the number resulting from the multiplication of the permissible emission rate and the actual heat input during the current year control period.

(5) A new budget source is not relieved of the requirements of section 227-3.16 of this Subpart, or any other provision of this Subpart if it does not receive the number of allowances requested from the account.

(6) If the department does not transfer all of the allocated allowances from the account to the compliance account of a new budget source(s) by November 30th of the current year, the department will transfer the remaining allowances from the account to existing general accounts of the owners and/or operators listed below or their successors or assignees. The share of remaining allowances to be transferred to each of the listed owners and/or operators will be calculated by multiplying the number of remaining allowances by the multiplication factors assigned to each of the listed owners and/or operators. The department will only transfer

allowances in whole ton increments. The department will hold any fractional shares of allowances in the name of the respective owner and/or operator as banked allowances until they may be combined with other fractional shares of allowances in future years and then transferred as whole ton increments.

<i>Owner/Operator</i>	<i>Multiplication Factor</i>
Albany Cogen Associates	0.0014
BNY Cogen	0.0017
CalEnergy Company	0.0042
Cogen Energy Technology	0.0027
Enserch Development	0.0030
Fulton Cogen Associates	0.0034
GPU International	0.0066
Indeck	0.0131
Jones/Black River	0.0045
Kamine	0.0129
KIAC	0.0014
LG&E	0.0011
Lockport Energy	0.0102
Megan Racine Associates	0.0024
Nissequogue Cogen Partners	0.0026
Oxbow Power	0.0019
Salt City Gen	0.0175
Sitbe	0.0124
TBG Cogen	0.0036
Trigen	0.0041
UDG Goodyear	0.0045
U.S. Generating	0.0083
Central Hudson Gas & Electric	0.0852
Consolidated Edison	0.1967
LILCO	0.1261
Niagara Mohawk	0.1876
New York State Electric & Gas	0.1488
Orange & Rockland	0.0826
Power Authority of the State of New York	0.0286
Rochester Gas & Electric	0.0210

(f) The allowances allocated to the Department Energy Efficiency Holding Account are subject to the following conditions:

(1) Upon receipt by the department of a statement from NYSERDA setting forth the number of tons of creditable NO<sub>x</sub> emissions reductions achieved during the current year, the department will transfer a corresponding number of allowances into the general account of NYSERDA.

(2) Creditable NO<sub>x</sub> emissions reductions are quantified permanent NO<sub>x</sub> emissions reductions achieved as a result of implementation of electric energy end-use efficiency measures undertaken through participation in certain energy performance contracting programs established by NYSERDA. The department will, in consultation with NYSERDA and the administrator, determine the methodology for calculating creditable NO<sub>x</sub> emissions reductions.

(3) NYSERDA may aggregate creditable NO<sub>x</sub> emissions reductions which are achieved at different participating sites in order to form whole ton quantities of reductions.

**Historical Note**

Sec. filed Feb. 3, 1999 eff. 30 days after filing.

**§ 227-3.6 General provisions.**

(a) A budget source that begins operation during the allocation period is required to comply with the terms of this Subpart.

(b) Any person subject to the provisions of this Subpart remains obligated to comply with all other applicable State and Federal laws and regulations.

(c) An allowance may only be used to comply with the requirements of this Subpart and may not be used to exceed the limitations of a permit or any other applicable law or regulation.

**Historical Note**

Sec. filed Feb. 3, 1999 eff. 30 days after filing.

**§ 227-3.7 Permits.**

The program established in this Subpart constitutes an applicable requirement as defined in section 201-2.1(b)(5) of this Title that must be accounted for in the budget source's title V facility permit. For any budget source which has already received a title V facility permit as of the effective date of this Subpart, the promulgation of this Subpart constitutes a circumstance warranting a reopening of the permit for cause as described in section 201-6.5(i) of this Title. A budget source must follow the procedures applicable to minor permit modifications as set forth in section 201-6.7(c) of this Title and in any relevant department guidance in responding to the reopening of the permit.

**Historical Note**

Sec. filed Feb. 3, 1999 eff. 30 days after filing.

**§ 227-3.8 Allowance transfer and use.**

(a) An allowance may be transferred at any time in accordance with this Subpart.

(b) The use of an allowance after its initially applicable control period is subject to the terms of section 227-3.9 of this Subpart concerning allowance banking.

(c) All allowances shall be allocated, transferred, or used as whole allowances. To determine the number of whole allowances, the number of allowances shall be rounded down for decimals less than 0.5 and rounded up for decimals of 0.5 or greater.

(d) An allowance may only be used for compliance for a particular control period if, at the allowance transfer deadline, it is held in either the budget source's compliance account or compliance overdraft account, or the budget source has submitted the allowance for recording in its compliance account or compliance overdraft account for the preceding control period.

(e) The following procedures must be used to conduct an allowance transfer:

(1) The transfer request must be documented in a paper or electronic format determined by the administrator. The request must be submitted to the administrator and must include, at a minimum, the following information:

(i) the account numbers identifying both the originating account and the acquiring account;

(ii) the name and address of the owners of the originating account and the acquiring account; and

(iii) the serial number for each allowance being transferred.

(2) The transfer request must include a statement of certification signed by the AAR for the originating account. The statement of certification shall read as follows: "I am authorized to make this submission on behalf of the holder(s) of the account and I hereby certify under penalty of law, that I have personally examined the foregoing and am familiar with the information contained in this document and all attachments, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including possible fines and imprisonment."

(3) The AAR for the originating account shall provide a copy of the transfer request to the AAR for the acquiring account.

(f) Transfer requests will be processed by the administrator in order of receipt. However, throughout the annual account balancing period which begins on January 1st, the administrator will suspend processing of any transfer request for a compliance account or a compliance overdraft account involving an allowance with a previous initially applicable control period. During the account balancing period, the administrator balances allowances in the various accounts in the NATS with corresponding NO<sub>x</sub> emissions recorded in the NETS. A transfer request for a compliance account or a compliance overdraft account involving an allowance with a future initially applicable control period will be processed during the account balancing period.

(g) An allowance transfer is valid when the following has been verified by the administrator:

(1) each allowance listed in the transfer request is held by the originating account at the time the transfer is to be recorded;

(2) the acquiring party has an account; and

(3) the transfer request has been filed by the AAR for the originating account.

(h) A valid allowance transfer will be recorded by the administrator by deducting the specified allowance from the originating account and adding it to the acquiring account.

(i) The administrator will give notice of a completed allowance transfer to the AAR for the originating account, the AAR for the acquiring account and designated state officials for the states where the acquiring and originating accounts are located. Notification may be made on paper or in electronic form and shall, at a minimum, include:

(1) the effective date of the transfer;

(2) the account numbers for both the originating account and the acquiring account;

(3) the names and addresses of the persons to which the originating and acquiring accounts are assigned; and

(4) the total number of allowances transferred and the serial number of each allowance.

(j) Should the owner and/or operator of a budget source or the holder of a general account determine that some or all allocated allowances should be transferred to another person's account for the remainder of the current allocation period, the AAR of the originating account shall submit to the administrator a transfer request that states this intent. A request for transfer of allowances for the remainder of the allocation period shall conform to the specifications of subdivision (c) of this section. In addition, the request for transfer shall be submitted to the department with a letter requesting that future allowance allocations be made directly to the acquiring account.

#### Historical Note

Sec. filed Feb. 3, 1999 eff. 30 days after filing.

### § 227-3.9 Allowance banking.

(a) An allowance may be banked in an account for future use.

(b) By the end of each annual account balancing period, the administrator will determine the total number of banked allowances in all accounts. The resulting number is to be used to determine the number of banked allowances which may be deducted for compliance purposes for the current year control period as follows:

(1) If the total number of banked allowances in all accounts is less than or equal to 10 percent of the OTR's NO<sub>x</sub> budget for the current year control period, all banked allowances may be deducted for compliance purposes for the current year control period on a 1-for-1 basis.

(2) If the total number of banked allowances in all accounts exceeds 10 percent of the OTR's NO<sub>x</sub> budget for the current year control period, each compliance account and compliance overdraft account shall be subject to the following banked allowance deduction protocol:

(i) The administrator will calculate a ratio as follows:

$$\frac{0.1 \times \text{OTR NO}_x \text{ Budget for the current year control period}}{\text{Number of banked allowances in all NATS accounts}}$$

(ii) The ratio calculated in subparagraph (i) of this paragraph, shall be applied by the administrator to the banked allowances in each compliance account and compliance over-draft account. The resulting number is the number of banked allowances in the accounts which can be deducted from the accounts for the current year control period on a 1-for-1 basis. Banked allowances in excess of this number must be deducted on a 2-for-1 basis.

**Historical Note**

Sec. filed Feb. 3, 1999 eff. 30 days after filing.

**§ 227-3.10 Early reduction allowances.**

The department will award early reduction allowances for certified reductions in NO<sub>x</sub> emissions achieved by a budget source during the control periods in 1997 and/or 1998. The department may certify these reductions and award early reduction allowances, usable in 1999 and thereafter, subject to the following requirements:

(a) The budget source must submit its application for certification of early reductions in NO<sub>x</sub> emissions within 30 days after the effective date of this regulation.

(b) Certification of early reductions in NO<sub>x</sub> emissions requires a finding by the department that the reductions are real, quantifiable, and surplus in accordance with the following procedures and any other applicable State regulations.

(c) In order for NO<sub>x</sub> emissions reductions to be characterized as surplus, the reductions must result from control of a budget source's NO<sub>x</sub> emission rate below the more stringent of:

(1) for budget sources in Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk and Westchester Counties, 0.2 lbs/MMBtu or a 65 percent reduction from the 1990 NO<sub>x</sub> emission rate, whichever is less stringent; for budget sources in the remainder of the State, 0.2 lbs/MMBtu or a 55 percent reduction from the 1990 NO<sub>x</sub> emission rate, whichever is less stringent;

(2) the permitted allowable NO<sub>x</sub> emission rate for the budget source, unless the original budget source operated in 1990 and has since been subject to repowering whereupon the level of control required by paragraph (1) of this subdivision supersedes the permitted allowable emission rate for purposes of establishing early reduction allowances;

(3) the actual emission rate for the 1990 control period; or

(4) if the budget source did not commence operation until after 1990, the actual emission rate for the average of two consecutive control periods that were representative of normal operations and which occurred within the first five years of operation.

(d) In determining the number of early reduction allowances to be awarded, the department shall presume a capacity utilization (in MMBtu) equal to the average capacity utilization of the budget source for the two consecutive control periods immediately preceding the control period for which early reduction allowances are sought to be awarded, adjusted for any reduced capacity utilization which has resulted from shutdown or curtailment of the budget source. The department may allow use of a different set of two consecutive control periods within the five years immediately preceding the control period for which early reduction allowances are sought to be awarded should the owner and/or operator of the budget source demonstrate, to the satisfaction of the department, that the alternative set of two consecutive control periods is more representative of normal operations.

(e) Early reduction allowances may be awarded for repowering of a budget source provided that the permit of the replacement source is issued after the effective date of this rule, and the budget source being replaced ceases operation in 1997 or 1998.

(f) The department will calculate the number of early reduction allowances to be awarded to a particular budget source by taking the difference between the budget source's NO<sub>x</sub> emission rate derived pursuant to subdivision (c) of this section and the budget source's reduced NO<sub>x</sub> emission rate achieved during 1997 and/or 1998 and multiplying that figure by the source's capacity utilization derived pursuant to subdivision (d) of this section.



(g) Once the department certifies a budget source's early reductions of NO<sub>x</sub> emissions and creates early reduction allowances, the department will modify the State NO<sub>x</sub> Budget to account for the early reduction allowances and will allocate the allowances to the budget source's compliance account by May 1, 1999.

(h) NO<sub>x</sub> emissions reductions achieved for purposes of establishing early reduction allowances cannot be used as emission reduction credits as described in Subpart 231-2 of this Part.

(i) By May 1, 1999, the department will produce a report which documents the number of early reduction allowances converted to allowances for use in 1999 and thereafter. The report or notice of availability of the report will be published in the Environmental Notice Bulletin.

**Historical Note**

Sec. filed Feb. 3, 1999 eff. 30 days after filing.

**§ 227-3.11 NATS—NO<sub>x</sub> Allowance Tracking System.**

(a) The administrator will establish and maintain the following accounts in the NATS:

- (1) compliance accounts;
- (2) compliance overdraft accounts;
- (3) general accounts;
- (4) the Department Retirement Account;
- (5) the Department Energy Efficiency Holding Account; and
- (6) the Department New Budget Source Holding Account.

(b) Any person may hold a general account. The administrator will open a general account upon receipt of a completed "General Account Information" form.

(c) Each account will have, at a minimum, the following information associated with it:

- (1) a unique identification number (the account number);
- (2) the name(s) of the account holder;
- (3) the names of the AAR and, if applicable, the alternate AAR;
- (4) the mailing addresses of the AAR and, if applicable, the alternate AAR;
- (5) the phone numbers of the AAR and, if applicable, the alternate AAR;
- (6) the street address of the facility at which the budget source(s) is located, if applicable; and
- (7) the state in which the budget source(s) is located, if applicable.

(d) Each allowance will have a unique serial number. Each allowance serial number will also indicate the initially applicable control period.

**Historical Note**

Sec. filed Feb. 3, 1999 eff. 30 days after filing.

**§ 227-3.12 AARs—Authorized Account Representatives.**

(a) Each budget source must designate an AAR, and may designate an alternate AAR, for each compliance account and compliance overdraft account.

(b) Each holder of a general account must designate an AAR and may designate an alternate AAR.

(c) The AAR has the authority to manage allowances of an account including the authority to request allowance transfers. The AAR is responsible for all transactions and reports submitted to the NATS and the NETS. The alternate AAR has the same authority as the AAR, however, all correspondence from the administrator shall be directed to the AAR.

(d) The AAR and alternate AAR for a compliance account and/or compliance overdraft account will be officially designated when the administrator receives a completed "Account

Certificate of Representation" form. The form constitutes an agreement of representation and contains, at a minimum, the following information:

- (1) the name, address, telephone number and facsimile number of both the AAR and the alternate AAR;
  - (2) identification of the budget source by plant name, state and unit number for which the certification of representation is submitted;
  - (3) a list of owners and operators of the budget source; and
  - (4) the signature of the AAR and alternate AAR below the following statement: "I certify that I, (name), was selected as the Authorized Account Representative or Alternate Authorized Account Representative [as applicable] by an agreement binding on the owners and operators of the budget source legally designated as (plant name)."
- (e) The owner and/or operator of an existing budget source must submit the "Account Certificate of Representation" form to the department within 30 days of the effective date of this Subpart. The department will forward the form to the administrator. A new AAR and/or alternate AAR may be designated with the submittal of a new "Account Certificate of Representation" form. The administrator will confirm the change of AAR and/or alternate AAR once the change is recorded in the NATS.
- (f) The AAR and, if applicable, the alternate AAR for a general account will be officially designated when the administrator receives a completed "General Account Information" form.

**Historical Note**

Sec. filed Feb. 3, 1999 eff. 30 days after filing.

**§ 227-3.13 Emissions monitoring.**

(a) *General provisions.* The owner and/or operator of each budget source subject to this Subpart must comply with the following requirements, as applicable:

(1) NO<sub>x</sub> mass emissions from each budget source shall be monitored as specified in both this section and the Guidance Document.

(2) A monitoring plan for each existing budget source must be submitted to the department in accordance with the procedures, but not the deadlines, outlined in the Guidance Document. The monitoring plan must be submitted within 30 days of the effective date of this Subpart. For budget sources not subject to 40 CFR part 75, the monitoring plan must include the additional information outlined in paragraph (c)(1) of this section, as appropriate. For any other source that becomes subject to this Subpart, the monitoring plan must be submitted as part of its application for a permit or permit modification, as applicable.

(3) Emissions monitoring systems required by this section shall be installed, operational and meet all of the certification testing requirements in accordance with the procedures outlined in the Guidance Document by May 1, 1999 or the first hour that the budget source is operating during a control period.

(4) Monitoring systems are subject to initial performance testing and periodic calibration, accuracy testing and quality assurance/quality control testing as specified in the Guidance Document.

(5) During a period when valid data are not being recorded by monitoring devices approved for use to demonstrate compliance with this Subpart, missing or invalid data shall be replaced with representative default data in accordance with the provisions of 40 CFR part 75 and the Guidance Document.

(6) NO<sub>x</sub> emissions data shall be reported to the NETS in accordance with provisions of section 227-3.15 of this Subpart.

(7) Budget sources that commence operation during the allocation period shall begin reporting data in the first hour that the budget source is operating during a control period.

(b) *Sources subject to 40 CFR part 75.* The owner and/or operator of each budget source subject to 40 CFR part 75 shall demonstrate compliance with this Subpart by using a certified 40 CFR part 75 monitoring system and is subject to the following requirements:

(1) If the budget source has a flow monitor certified under 40 CFR part 75, NO<sub>x</sub> emissions in lbs/hr shall be determined using a CEMS and the flow monitor and by multiplying together the figures resulting from application of subparagraphs (i) and (ii) of this paragraph:

(i) the NO<sub>x</sub> emission rate in lbs/MMBtu determined by using the procedure set forth in 40 CFR part 75 appendix F, section 3; and

(ii) the hourly heat input in MMBtu/hr determined by using the procedures set forth in 40 CFR part 75 appendix F, section 5.

(2) If the budget source does not have a certified flow monitor, but does have a CEMS, NO<sub>x</sub> emissions in lbs/hr shall be determined by multiplying together the figures resulting from application of subparagraphs (i) and (ii) of this paragraph:

(i) the NO<sub>x</sub> emission rate in lbs/MMBtu determined by using the procedure set forth in 40 CFR part 75 appendix F, section 3; and

(ii) the hourly heat input in MMBtu/hr determined by using the procedures set forth in 40 CFR part 75 appendix D.

(3) If the procedures set forth in 40 CFR part 75 appendix E are used to determine the NO<sub>x</sub> emission rate, NO<sub>x</sub> emissions in lbs/hr shall be determined by multiplying together the figures resulting from the application of subparagraphs (i) and (ii) of this paragraph:

(i) the NO<sub>x</sub> emission rate in lbs/MMBtu determined using the procedures set forth in 40 CFR part 75 appendix E; and

(ii) the hourly heat input in MMBtu/hr determined using the procedures set forth in 40 CFR part 75 appendix D.

(4) If the procedures set forth in 40 CFR part 75 subpart E are used to determine the NO<sub>x</sub> emission rate, NO<sub>x</sub> emissions in lbs/hr shall be determined by multiplying together the figures resulting from the application of subparagraphs (i) and (ii) of this paragraph:

(i) the NO<sub>x</sub> emission rate in lbs/MMBtu determined using the alternative monitoring method approved under 40 CFR part 75 subpart E; and

(ii) the hourly heat input in MMBtu/hr determined in accordance with the procedures set forth in the Guidance Document.

(5) If the budget source emits to common or multiple stacks, or both, emissions shall be monitored according to the procedures set forth in the Guidance Document.

(c) *Sources not subject to 40 CFR part 75.* The owner and/or operator of a budget source which is not subject to 40 CFR part 75 shall meet the monitoring requirements of this Subpart by:

(1) Submitting to the department and the administrator a monitoring plan as specified in paragraph (a)(2) of this section which must include the following information, as appropriate:

(i) a description of the monitoring approach to be used;

(ii) a description of the major components of the monitoring system including the manufacturer, serial numbers of the component, the measurement span(s) of the components and documentation to demonstrate that the measurement span of each component is appropriate to measure all of the expected values. This requirement applies to all monitoring systems including CEMS which have not been certified pursuant to 40 CFR part 75;

(iii) an estimate of the accuracy of the system and documentation to demonstrate how the estimate of accuracy was determined;

(iv) a description of the tests that will be used for initial certification, initial quality assurance, periodic quality assurance, and relative accuracy;

(v) if the monitoring system uses a default emission rate or unit specific emission factor, the monitoring plan shall include the following:

(a) All information necessary to support the emission rate including historical monitoring data and historical fuel usage data. If the source plans to conduct emission testing to determine emission rate, the plan must include a test protocol explaining the testing to be conducted.

(b) Procedures which will be utilized to demonstrate that any control equipment in operation during the testing to develop source specific emission factors or during development of load-based emissions curves are in use when those factors or emission curves are applied to calculate  $\text{NO}_x$  emissions.

(c) Alternative uncontrolled emission rates to be used to calculate  $\text{NO}_x$  emissions during periods when control equipment is not being used or is inoperable;

(vi) the following documentation regarding heat input determination, as appropriate:

(a) if the method for determining heat input involves boiler efficiency testing, a description of the test to determine boiler efficiency;

(b) if the method for determining heat input uses fuel sampling, a description of the test to be used in the fuel sampling program;

(c) if the method for determining heat input uses fuel flow meters, the meters shall be certified pursuant to 40 CFR part 75 appendix D, or equivalent certification methodology;

(vii) as described in the Guidance Document, schematics for the sources, data flow diagrams, and a list of the Electronic Report Record Types used to report quarterly data.

(2) Determining  $\text{NO}_x$  emission rate in lbs/MMBtu using one of the following methods:

(i) Implementing monitoring in accordance with 40 CFR part 75.

(ii) If the budget source is required to have and operate a CEMS to meet the requirements of 40 CFR part 60 or other State requirements or permits, the CEMS must be used to meet the requirements of this paragraph. 40 CFR part 60 monitors used for this purpose shall meet quality assurance criteria as described in the Guidance Document. Any time that a 40 CFR part 60 CEMS cannot be used to report data for this program because it does not meet the requirements of the Guidance Document, missing data shall be substituted using the procedures in 40 CFR part 75 subpart D. In addition, a CEMS that has not undergone initial certification testing to meet the requirements of 40 CFR part 75 or 40 CFR part 60 shall meet the initial certification requirements contained in the Guidance Document.

(iii) If the budget source is an oil or gas fired source with a maximum heat input capacity of less than 250 MMBtu/hr or an oil or gas fired peaking source of any size and does not have a CEMS, any of the following methodologies may be used to measure  $\text{NO}_x$ , consistent with the Guidance Document:

(a) for a boiler or a turbine, the procedures contained in 40 CFR part 75 appendix E ;

(b) for a combustion turbine, a default emission factor as follows:

(1) 0.7 lb/MMBtu if gas fired;

(2) 1.2 lbs/MMBtu if oil fired; or

(3) the source specific maximum potential  $\text{NO}_x$  emission rate determined through testing performed in accordance with a protocol approved by the department;

(c) for a boiler, a default emission factor as follows:

(1) 2 lbs/MMBtu if oil fired;

(2) 1.5 lbs/MMBtu if gas fired; or

(3) the source specific maximum potential  $\text{NO}_x$  emission rate determined through testing performed in accordance with a protocol approved by the department.

(iv) Any other method authorized in the Guidance Document and approved by the department.

(3) Determining heat input rate using one of the following methods:

(i) If the budget source does not have a flue gas flow monitor, any of the following methods may be used upon department approval:

(a) Use of a flow monitor and a diluent monitor meeting the requirements of 40 CFR part 75 and the procedures set forth in 40 CFR part 75 appendix F section 5.

(b) For a budget source that combusts only oil or natural gas, use of a fuel flow monitor meeting the requirements of 40 CFR part 75 appendix D and the procedures set forth in 40 CFR part 75 appendix F section 5.

(c) For a budget source having a rated capacity with a rated output of less than 25 megawatts or that operates as a peaking unit only, that combusts only oil or natural gas, measuring fuel use over a representative period and calculating the heat input on an hourly basis by apportioning the fuel based on electrical load in accordance with the following formula:

$$\text{Hourly heat input} = \frac{\text{Hourly electrical load} \times \text{Total heat input}}{\text{Total electrical load}}$$

(d) For a budget source that combusts any fuel other than oil or natural gas, one of the following alternative methods:

(1) conducting fuel sampling and analysis and monitoring fuel usage;

(2) using boiler efficiency curves and other monitored information such as boiler steam output; and

(3) any other methods approved by the department.

(ii) Alternative methods specified in the Guidance Document and approved by the department, which may be subject to both initial and periodic relative accuracy, and quality assurance testing as accepted by the department.

(4) Determining the NO<sub>x</sub> emissions in lbs/hr by multiplying the NO<sub>x</sub> emission rate and heat input rate figures together.

#### Historical Note

Sec. filed Feb. 3, 1999 eff. 30 days after filing.

### § 227-3.14 Recordkeeping.

The owner and/or operator of any budget source must, for at least five years, retain records and reports of all measurements, data, calculations and other information required by the terms of this Subpart.

#### Historical Note

Sec. filed Feb. 3, 1999 eff. 30 days after filing.

### § 227-3.15 Reporting.

(a) The AAR for each budget source must submit to the administrator, in a format which meets the requirements of the Administrator's Electronic Data Reporting convention, information regarding emissions and operations during each calendar quarter of each year in accordance with the procedures specified in the Guidance Document.

(b) Upon permanent shutdown, a budget source may be exempted from the requirements of this section after receiving written department approval of a request submitted by the AAR for the budget source which identifies the budget source and the date of shutdown.

#### Historical Note

Sec. filed Feb. 3, 1999 eff. 30 days after filing.

### § 227-3.16 Annual reconciliation of allowances and NO<sub>x</sub> emissions.

(a) Each year during the period extending from November 1st through the allowance transfer deadline, the AAR for each budget source may request the administrator to deduct a number of allowances from the budget source's compliance account equal to the current year control period

NO<sub>x</sub> emissions from the budget source. The request must include identification of the compliance account from which the deductions should be made. The request may include the serial numbers of the particular allowances to be deducted. If no serial numbers are included, the administrator will first deduct allowances allocated for the current year control period. If the administrator exhausts all allowances allocated for the current year control period, the administrator will next deduct banked allowances in the compliance account in the order in which they were deposited. The request may only involve allowances placed in the budget source's compliance account; allowances in a compliance overdraft account or general account may not be deducted pursuant to the request.

(b) If, by November 1st of the current year, the total number of allowances in the budget source's compliance account and compliance overdraft account, including allowance transfer requests properly submitted to the administrator, is less than the current year control period NO<sub>x</sub> emissions from the budget source, the budget source must obtain additional allowances by the allowance transfer deadline so that the total number of allowances in the compliance account and compliance overdraft account, including allowance transfer requests properly submitted to the administrator by the allowance transfer deadline, at least equals the current year control period NO<sub>x</sub> emissions rounded to the nearest whole ton. The administrator will not consider for compliance purposes allowances contained in any general account held by the owner and/or operator of the budget source.

(c) If, by the allowance transfer deadline, the AAR either makes no allowance deduction request or makes a request that is insufficient to meet the requirements of subdivision (a) of this section, the administrator will deduct a number of allowances from the budget source's compliance account and compliance overdraft account that equals the current year control period NO<sub>x</sub> emissions from the budget source. Under this subdivision, the administrator will deduct allowances in the following order:

- (1) current year allowances from the compliance account in the order in which they were deposited;
- (2) banked allowances in the compliance account in the order in which they were deposited.
- (3) current year allowances from the compliance overdraft account in the order in which they were deposited; and
- (4) banked allowances from the compliance overdraft account in the order in which they were deposited.

(d) Any banked allowances deducted pursuant to this section shall be deducted in accordance with the provisions of section 227-3.9 of this Subpart.

#### Historical Note

Sec. filed Feb. 3, 1999 eff. 30 days after filing.

### § 227-3.17 Compliance certification.

(a) By the allowance transfer deadline, the AAR for each budget source must submit a compliance certification to the department relating to the budget source's activities during the current year.

(b) The compliance certification shall contain, at a minimum:

- (1) identification of the budget source, including address of the budget source, name and address of the owner and/or operator, account numbers of the relevant compliance account and compliance overdraft account and the name of the AAR;
- (2) a statement indicating whether NO<sub>x</sub> emissions data have been reported to the NETS in accordance with the procedures set forth in section 227-3.15 of this Subpart and any additional procedures established by the administrator;
- (3) a statement indicating whether the budget source has a number of allowances in its compliance account or compliance overdraft account equal to or greater than the budget source's NO<sub>x</sub> emissions for the current year control period;

2-15-99

- (4) a statement indicating whether the monitoring data reflected the actual operation of the budget source;
  - (5) a statement indicating whether all NO<sub>x</sub> emissions from the budget source were accounted for, either through the relevant monitoring or application of the appropriate missing data procedures; and
  - (6) a statement indicating whether there were any changes in the method of operation of the budget source or the method of monitoring the budget source during the current year.
- (c) The department may verify compliance by whatever means necessary, including, but not limited to, the following:
- (1) inspection of budget source operating records;
  - (2) examining information contained in the NATS regarding allowance deductions and transfers for the budget source;
  - (3) examining information contained in the NETS regarding NO<sub>x</sub> emissions from the budget source;
  - (4) testing emission monitoring devices; and
  - (5) testing conducted pursuant to Part 202 of this Title.

**Historical Note**

Sec. filed Feb. 3, 1999 eff. 30 days after filing.

**§ 227-3.18 Enforcement.**

(a) The department may enforce the provisions of this Subpart pursuant to any applicable laws or regulations.

(b) If the budget source fails to meet the requirement of section 227-3.16(b) of this Subpart to have a number of allowances in its compliance account and/or compliance overdraft account by the allowance transfer deadline, including allowance transfer requests properly submitted by the allowance transfer deadline, that at least equals the current year control period emissions, the following conditions apply:

- (1) For purposes of determining the number of days of violation, the department will presume that each day that the source operated during the control period constitutes a day in violation (up to 153 days) unless the budget source can demonstrate, to the satisfaction of the department, that a lower number of days should be considered.
- (2) Each ton of excess emissions constitutes a separate violation.
- (3) The administrator will automatically deduct allowances from the budget source's compliance account and compliance overdraft account at the start of the next control period at a rate of three allowances for every one ton of excess NO<sub>x</sub> emissions.

**Historical Note**

Sec. filed Feb. 3, 1999 eff. 30 days after filing.

**§ 227-3.19 Program evaluation.**

(a) The department will, prior to May 1, 2002, complete a report evaluating the program. The evaluation will include the following, as appropriate:

- (1) a confirmation of the accuracy of emissions reporting through validation of CEMS and data acquisition systems at budget sources and opt in sources;
- (2) a review of allowance transfer and use by budget sources and opt in sources;
- (3) an examination of the extent to which banked allowances have contributed to NO<sub>x</sub> emissions in excess of the State NO<sub>x</sub> Budget and OTR NO<sub>x</sub> Budget for each control period preceding the completion of the evaluation;
- (4) an assessment of whether the program is consistent with the requirements of the Act; and
- (5) analysis of the following concerning the operation of the Department Energy Efficiency Holding Account:
  - (i) the methodology for calculating creditable NO<sub>x</sub> emissions reductions.
  - (ii) the viability of both increasing the number of allowances allocated to this type of account and transferring allowances to general accounts of entities other than NYSEDA when this Subpart is revised.

(b) The department will consider the evaluation report, similar reports or audits conducted by other OTC members, and any other relevant information in determining how this Subpart will be revised.

**Historical Note**

Sec. filed Feb. 13, 1999 eff. 30 days after filing.